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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS GONZALEZ,

Defendant and Appellant.

B268729

(Los Angeles County
Super. Ct. No. BA433207)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Douglas W. Sortino, Judge. Affirmed.

David B. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

In an amended information filed by the Los Angeles County District Attorney, defendant and appellant Jesus Gonzalez was charged with second degree robbery (count 1; Pen. Code, § 211)¹ and three counts of assault with a deadly weapon (ADW) (counts 2-4; § 245, subd. (a)(1)). As to count 1, it was alleged that defendant personally used a deadly weapon within the meaning of section 12022, subdivision (b)(1). As to count 4, it was alleged that defendant personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). It was further alleged that defendant's prior convictions could subject his sentence to enhancements within the meaning of sections 667, subdivisions (a)(1) and (b) through (i), 667.5, and 1170.12.

Defendant pleaded not guilty and denied the allegations.

A jury convicted defendant as charged. It found the weapon allegation to be true, but found the great bodily injury allegation to be not true. Defendant admitted the prior conviction allegations and the trial court found those to be true. The trial court granted defendant's *Romero* motion² as to counts 2 and 3, but denied it as to counts 1 and 4.

Probation was denied, and defendant was sentenced to state prison for a term of 50 years to life, plus six years. He was given certain custody credits and was ordered to pay various fines.

Defendant timely filed a notice of appeal. On appeal, he argues that the trial court erred in not understanding that it had the discretion to sentence defendant to concurrent rather than consecutive terms. Therefore, he asks that we reverse the sentence and remand the case so that the question of concurrent sentences can be considered.

We affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

FACTUAL BACKGROUND

I. Prosecution Evidence

Margarita Villarreal (Villarreal) was a cashier at the Dollar Tree store in Highland Park. On January 26, 2015, she asked her assistant manager, Maria Navarrete (Navarrete), to collect some cash from her register. Villarreal counted out \$400 and gave the money to Navarrete.

Defendant came up behind them and demanded the money. He pointed a box cutter at Navarrete. She panicked and dropped the money on the floor. She then screamed for the manager, saying “They’re robbing us.” As defendant bent over to pick up the money, Villarreal stepped on the money to prevent him from taking it. He slashed through her shoe, cutting her toe, and scooped up the money.

Arnoldo Pineda (Pineda), the manager, emerged from his office and grabbed defendant by the collar before he could run out of the store. Defendant threw some shopping baskets and ran out of the store.

Navarrete and Pineda followed defendant out the front door. Pineda again grabbed defendant by the collar. Navarrete told Pineda to let go of defendant before he got cut. Defendant was swinging the box cutter and sliced Pineda’s side and arm. Defendant ran away.

Los Angeles Police Officers Brian Davis and Timothy Smith were patrolling the shopping center when they were flagged down by Navarrete and Pineda. The officers saw defendant running down the street, through the parking lot. Officer Davis chased defendant on foot while Officer Smith pursued him by car. Officer Davis yelled several times for defendant to stop. Defendant was arrested about a block away from the Dollar Tree store. Officer Smith retrieved a box cutter near a parked car.

II. Defense Evidence

Defendant did not present any evidence.

DISCUSSION

Defendant argues that the trial court did not understand that it had the discretion to sentence him to concurrent, rather than consecutive terms. Thus, he requests that we remand the matter for the trial court to consider this issue.³

A. Factual Background

After the jury found defendant guilty, the trial court asked defendant if he intended to admit the truth of the two prior convictions. The trial court stated: “If these two prior convictions are found to be true as strike convictions, those would expose you to a term of 25 years to life on each of those four counts. If I find them true based upon your admission and I do not strike them, the mandatory sentence would then be 100 years to life on those four counts. I would have to give you 25 to life. I would have to run the terms consecutive. That is the exposure if you admit those two prior convictions as strike convictions and I find them to be true.”

Thereafter, defendant admitted the two prior convictions and the trial court found the allegations to be true.

Defendant was sentenced to a term of 25 years to life on count 1. He was also sentenced to a consecutive term of 25 years to life on count 4, with the total term on those two counts of at least 50 years to life. The trial court then added a one-year consecutive term on count 1 for the use of a knife and a five-year consecutive term for the serious felony conviction found true under section 667, subdivision (a). Thus, the total term on counts 1 and 4 was 50 years to life, plus six.

On counts 2 and 3, the trial court struck the strikes; it sentenced defendant to the midterm concurrently on count 2; it also sentenced defendant to the midterm on count 3 and stayed the sentence pursuant to section 654.

³ We reach the merits of this issue without deciding whether defendant forfeited this issue by failing to raise it below.

B. Relevant Legal Authority

When a defendant is sentenced on multiple felony counts under the “Three Strikes” law because he has previously been convicted of one or more serious or violent felonies, the trial court must impose consecutive sentences for all the current convictions unless the current offenses were committed on the same occasion or arise from the same operative facts. (§ 667, subd. (c)(6), (7).) The trial court has the discretion to impose either concurrent or consecutive sentences for crimes committed on the same occasion or arising from the same set of operative facts, even though they involve different victims. (§ 667, subd. (c)(6), (7); see also *People v. Deloza* (1998) 18 Cal.4th 585, 591; *People v. Lawrence* (2000) 24 Cal.4th 219, 226–228, 233.) In deciding whether to impose consecutive or concurrent sentences, the trial court is guided by the criteria set forth in California Rules of Court, rule 4.425 and considers, inter alia, whether the crimes were predominately independent of each other, whether they involved separate acts of violence or threats of violence, whether they were committed at different times or separate places, and whether any factors in aggravation existed to warrant a consecutive sentence. (*People v. Deloza, supra*, 18 Cal.4th at p. 596, fn. 8.) Only when the record shows that the trial court misunderstood the scope of its discretion to impose concurrent sentences is remand for resentencing required. (*Id.* at p. 600.)

C. Analysis

Here, the appellate record demonstrates that the trial court understood its sentencing discretion. In determining whether to strike defendant’s prior convictions, the trial court noted that the 2006 convictions for robbery were “a little old.” But, the trial court also found that defendant had originally been charged with 18 separate robberies and took a plea bargain of seven years in exchange for admitting them. The trial court also found that the facts and circumstances of the instant crimes were aggravated. And, the trial court pointed out that defendant committed the current offenses less than two months after he was discharged from parole. Finally, the appellate record shows that the trial court imposed only two consecutive sentences—count 1 (robbery of Navarrete) and

count 4 (ADW on Pineda). The trial court stayed the sentence on count 2 (ADW on Navarrete) and imposed a concurrent sentence as to count 3 (ADW on Villarreal).

In urging remand, defendant points to the trial court’s comment that it “ha[d] to run the terms consecutive” and characterization of the consecutive sentence as “mandatory” and concludes that the trial court must have misunderstood its discretion. Defendant takes the trial court’s remarks out of context. As shown above, the trial court understood its discretion and exercised it.⁴ There is no reason to remand the matter for reconsideration of this issue.

DISPOSITION

The judgment is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT

⁴ If the trial court actually believed that it had to sentence defendant to 100 years to life on the four counts, then that is what it would have done. But it did not do that—it sentenced defendant to 50 years to life, plus six.